THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6357 of 2005

03.8.2007

Between:
Mamilloapalli Ramesh, S/o.Late Peda Koteswara Rao

…Petitioner

And

The Mandal Revenue Officer, Buttaigudem Mandal, West Godavari District
And others

…Respondents

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ORDER:

The petitioner and his brother are owners of land admeasuring Acs.3.3 in survey No.266/3P (total extent of survey number is Acs.6.45) situated at Surapuvarigudem village of Buttaigudem Mandal in West Godavari District. It is their case that the land was originally purchased by the great aunt of the petitioner along with another from Kommireddy Narasaiah and during family partition, the great aunt got the property. After her death, father of the petitioner along with his brother China Koteswara Rao got the property. The Special Deputy Collector (SDC) passed orders on 16.2.1991 in SR No.1467 of 1990 in favour of petitioner's father observing that there is no contravention of the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, as amended by Regulation I of 1970 (the Regulation, for brevity). After death of the father, petitioner along with his mother and brother succeeded to the property. They are in possession of the land. The Mandal Revenue Officer, Buttaigudem Mandal (MRO) – first respondent herein; issued memo in Roc.NO.201/2003 (Dy.MRO) dated 23.6.2003 directing the Revenue Inspector-I to evict among others Mamillapalli Peda Koteswara Rao (father of the petitioner), from the land in survey No.266/3, 266/4, 269/3, 270/4 and 292/1. Aggrieved by the same, the present writ petition is filed. Be it noted the memo issued by the MRO to the second respondent refers to an order passed by the SDC in SR No.96 of 1979 and order passed by the Agent to the Government in SRA No.31 of 1986.

Learned Counsel for the petitioner submits that the father of the petitioner or his brother or himself were not parties to SR No.96 of 1979 or SRA No.31 of 1986 and therefore the memo issued by the first respondent to evict the petitioner's father purportedly in accordance with the orders in the above cases is illegal and arbitrary. Secondly he submits that even if the petitioner is to be evicted from the land in survey No.266/3, respondents have to follow the procedure contemplated under Rule 7(4) of

Andhra Pradesh Scheduled Areas Land Transfer Regulation Rules, 1969 (the Rules, for brevity). He also placed reliance on the decision of this Court in W.P.No.12960 of 2003, dated 01.4.2005, which was filed by the younger paternal uncle of the petitioner, Mamillapalli Chinakoteswara Rao, and others. In the said decision reported as **Mamillapalli Chinakoteswara Rao v Mandal Revenue Officer**[1], this Court having considered the scope of Rule 7(4) of the Rules and Order XXI Rule 22 of Code of Civil Procedure, 1908 (CPC), set aside the order passed by the MRO (similar to the order impugned in this writ petition) and observed as under.

> As per Rule 7 (4) of the AP Scheduled Areas Land Transfer Rules 1969 (for short 'the Rules'), the order for restoration of possession passed by the Agent or the Agency Divisional Officer or other Officer has to be executed like a decree for ejectment passed by a civil Court. In view thereof the order passed in favour of the 3rd respondent has to be executed like a decree for ejectment against the respondents in the orders passed by the Special Deputy Collector and the Agent to Government, confirmed in WP No.1755 of 1980. It is well known that before executing a decree for eviction passed two years before the filing of the EP, the judgment debtor is entitled to notice under Rule 22 of Order 21 CPC. It is not even the case of 3rd respondent that he filed a petition seeking execution of the order in his favour. When the appeal filed by the 5th petitioner is allowed by the Agent, how he can be evicted is not mentioned by any of the respondents. There is nothing on record to show that 3rd respondent filed correlation sketches before the Special Deputy Tahsildar delimiting the land sought delivery of possession by him in patta No.27. Respondents did not produce any record to show that the lands mentioned in the impugned memo are in fact located in patta No.27. The documents produced by the learned counsel for 3rd respondent show that lands in S.No.266/3, 266/4, 270/4, 292/1 were in Old No.212/3 corresponding to patta No.62 in 1378 Fasli and patta No.27 of Surapuvarigudem. Since appeal of Doddi Veeranna and Parimi Rattaiah in respect of Ac.4-00 cents of Juvvikoyya Chenu and Ac.4-00 cents of Marrikoyya Chenu was allowed, there should be some material before the executing Court to find out where that Ac.4-00 cents of Juvvikoyya Chenu and Ac.4-00 cents of Marrikoyya Chenu are located and where the other Ac.7-00 cents of land in Marrikoyya Chenu, in possession of Parimi Surya Rao, whose appeal was dismissed, are located. So it is prima facie evident that even without any material before it, and even without any petition for execution by the 3rd respondent and even without notice to petitioners, first respondent directed the 2nd respondent by his impugned memo, to eject the petitioners and put the 3rd respondent in possession of the lands mentioned in the memo though those S.Nos are not found in the order of Special Deputy Tahsildar and Agent to Government in S.R.No.96 of 1979 and S.R.A.No.31 of 1986.

It is brought to the notice of this Court by learned Counsel for the

petitioner as well as learned Government Pleader for Social Welfare that against the order in W.P.No.12960 of 2003 referred to herein above, writ appeal being W.A.No.924 of 2004 is filed and is pending and that the order of the learned Single Judge has not been suspended. Therefore, following the decision in **Mamillapalli Chinakoteswara Rao** (supra), this writ petition is also allowed, as prayed for. No costs.

(**V.V.S.RAO, J**)

August 03, 2007
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[1] 2005(5) ALD 126 = 2005(3) ALT 88